

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

JENNIFER VANDERSTOK, *et al.*,

Plaintiffs,

V.

**MERRICK GARLAND, in his official
capacity as Attorney General of the United
States, *et al.*,**

Defendants.

**Civil Action No.
4:22-cv-00691-O**

POLYMER80, INC.'S NOTICE REGARDING REMAINING CLAIMS

Polymer80, Inc. (“Polymer80”) respectfully submits this notice in response to the Court’s order that Polymer80 “file a notice on the docket **no later than July 12, 2023**, informing the Court whether its remaining claims are moot and, if so, proposing an order of Final Judgment as to those claims.” (Doc. 231 at 2 n.1). Polymer80’s remaining claims—*i.e.*, challenges to the Open Letter and Polymer80 Letter—are not moot.

“[A] case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citation and quotation marks omitted); *see also Spell v. Edwards*, 962 F.3d 175, 179 (5th Cir. 2020) (same). Polymer80’s challenges to the Open Letter and Polymer80 Letter are not moot.

This Court’s opinion and orders vacating the Final Rule, (*see* Docs. 227, 231), mooted Polymer80’s challenges to the legality of the Final Rule (Counts I, III, V, VII, IX, XII, XIII in part, XIV in part, XV, XVI in part, and XVII in part). Mootness may occur when “a statute or regulation is amended or repealed after plaintiffs bring a lawsuit challenging the legality of that statute or regulation.” *Freedom From Religion Found., Inc. v. Abbott*, 58 F.4th 824, 832 (5th Cir. 2023) (collecting authorities).

Polymer80 also challenged Defendants’ other administrative actions—the promulgation and issuance of the Open Letter and Polymer80 Letter—that have not been vacated, withdrawn, amended, or repealed. There remains a “credible threat of prosecution” under the Gun Control Act as unlawfully interpreted by the Open Letter and Polymer80 Letter. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014). For those reasons, Polymer80’s challenges to the legality of those administrative actions (Counts II, IV, VI, VIII, X, XI, XIII in part, XIV in part, XVI in part, and XVII in part) are not moot. *See, e.g., Relf v. Weinberger*, 565 F.2d 722, 725–27 (D.C. Cir. 1977) (holding that agency’s expressions of intent to promulgate new rulemaking proceedings mooted challenge).

This Court can “grant . . . effectual relief” to Polymer80, including declaratory relief and injunctive relief vacating and enjoining enforcement of the Open Letter and Polymer80 Letter. *See Chafin*, 568 U.S. at 172. The Open Letter and Polymer80 Letter are unlawful extensions of the now-vacated Final Rule, and they should be vacated for the same reasons. (*See* Doc. 227). Their continued existence is a threat to Polymer80’s business and corporate existence. Polymer80’s challenges to these additional agency actions present a justiciable controversy.

Polymer80 respectfully requests that this Court permit Polymer80 to prosecute its remaining claims pursuant to a schedule like that proposed by Polymer80 and Defendants in their Joint Report Regarding Contents of Scheduling Order filed in *Polymer80 v. Garland*, (*see* Doc. 32, No. 4:23-cv-00029-O), by ordering Defendants to lodge administrative records of the Open Letter and Polymer80 Letter in this action and inviting summary judgment briefing to follow.¹ *See* Proposed Scheduling Order attached hereto as **Exhibit A**.

¹ Plaintiff’s notice contemporaneously filed in *Polymer80 v. Garland* respectfully requests that the Court stay *Polymer80* while Polymer80 prosecutes its remaining claims in this action.

Respectfully submitted,

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ATTORNEYS FOR POLYMER80, INC.

CERTIFICATE OF SERVICE

I certify that on July 7, 2023, the foregoing document was served, via the Court's CM/ECF Document Filing System, upon the registered CM/ECF users in this action.

/s/ Dennis L. Daniels Jr.

Dennis L. Daniels Jr.